

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE ANNUITY, PENSION, WELFARE
and APPRENTICESHIP SKILL
IMPROVEMENT AND SAFETY FUNDS
of the INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 137,
137A, 137B, 137C & 137R, AFL-CIO,
by its TRUSTEES EDWARD KELLY,
JEFFREY LOUGHLIN, PATER PATERNO,
ROSS PEPE, NICHOLAS SIGNORELLI and
NICHOLAS SIGNORELLI, JR. and JOHN
and JANE DOE, as Beneficiaries of the
ANNUITY, PENSION, WELFARE
and APPRENTICESHIP SKILL
IMPROVEMENT AND SAFETY FUNDS
of the INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 137,
137A, 137B, 137C & 137R, AFL-CIO,

Plaintiffs,

v.

NACIREMA ENVIRONMENTAL SERVICES
COMPANY, INC.,

Defendant.

Civil Action No.: 08-cv-2092

Honorable Stephen C. Robinson

**ANSWER TO COMPLAINT AND SEPARATE DEFENSES
ON BEHALF OF DEFENDANT
NACIREMA ENVIRONMENTAL SERVICES COMPANY, INC.**

Defendant Nacirema Environmental Services Company, Inc. ("Nacirema"), a New Jersey corporation, with principal offices at 211-217 W 5th Street, Bayonne, NJ 07002, by and through its attorneys, by way of Answer to the Complaint of Plaintiffs, says as follows:

1. Defendant neither admits nor denies the allegations contained in ¶1 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

JURISDICTION

2. Defendant neither admits nor denies the allegations contained in ¶2 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

3. Defendant neither admits nor denies the allegations contained in ¶3 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

THE PARTIES

4. Defendant neither admits nor denies the allegations contained in ¶4 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

5. Defendant neither admits nor denies the allegations contained in ¶5 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

6. Defendant neither admits nor denies the allegations contained in ¶6 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

7. Defendant neither admits nor denies the allegations contained in ¶7 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

8. Defendant neither admits nor denies the allegations contained in ¶8 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly, leaves Plaintiff to their proofs.

9. Defendant neither admits nor denies the allegations contained in ¶9 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

10. Defendant admits the allegations contained in ¶10 of Plaintiffs' Complaint.

11. Defendant admits the allegations contained in ¶11 of Plaintiffs' Complaint.

12. Defendant admits the allegations contained in ¶12 of Plaintiffs' Complaint.

13. Defendant neither admits nor denies the allegations contained in ¶13 of Plaintiffs' Complaint as the same represents a legal conclusion and accordingly leaves Plaintiffs to their proofs.

AS AND FOR A FIRST CAUSE OF ACTION

14. Defendant Nacirema hereby repeats its Answers to each and every allegation contained in the preceding Paragraphs of Plaintiffs' Complaint as though set forth at length herein and incorporate the same by reference.

15. Defendant neither admits nor denies the allegations contained in ¶15 of Plaintiffs' Complaint as any alleged Collective Bargaining Agreement speaks for itself and, further, the same calls for a legal conclusion and accordingly leaves Plaintiffs to their proofs.

16. Defendant neither admits nor denies the allegations contained in ¶16 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

17. Defendant denies the allegations contained in ¶17 of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in ¶18 of Plaintiffs' Complaint.

19. Defendant neither admits nor denies the allegations contained in ¶19 of Plaintiffs' Complaint as Defendant is without sufficient knowledge, information and belief as to the same and further, the same represents a legal conclusion and, accordingly leaves Plaintiff to their proofs.

20. Defendant denies the allegations contained in ¶20 of Plaintiffs' Complaint.

WHEREFORE, Defendant Nacirema respectfully requests a determination dismissing each and every Count and/or Claim in the Complaint of Plaintiffs with Prejudice, together with such other relief as the Court may deem appropriate.

AS AND FOR A SECOND CAUSE OF ACTION

21. Defendant Nacirema hereby repeats its Answers to each and every allegation contained in the preceding Paragraphs of Plaintiffs' Complaint as though set forth at length herein and incorporate the same by reference.

22. Defendant neither admits nor denies the allegations contained in ¶22 of Plaintiffs' Complaint as the same represents a legal conclusion and further any alleged Collective Bargaining Agreement and/or ERISA speak for themselves and accordingly leaves Plaintiffs to their proofs.

23. Defendant neither admits nor denies the allegations contained in ¶23 of Plaintiffs' Complaint as the same represents a legal conclusion and further any alleged Collective Bargaining Agreement and/or ERISA speak for themselves and accordingly leaves Plaintiffs to their proofs.

24. Defendant denies the allegations contained in ¶24 of Plaintiffs' Complaint.

25. Defendant denies the allegations contained in ¶25 of Plaintiffs' Complaint.

WHEREFORE, Defendant Nacirema respectfully requests a determination dismissing each and every Count and/or Claim in the Complaint of Plaintiffs with Prejudice, together with such other relief as the Court may deem appropriate.

Dated: Harrison, New Jersey
May 2, 2008

TOBIA & SORGER ESQS., LLC

/s/ Ronald L. Tobia, Esq.
BY: RONALD L. TOBIA, ESQ. (RT-9775)
Attorneys for Defendant Nacirema Environmental
Services Company, Inc.
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, for failure to state a claim on which relief may be granted.

SECOND SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant paid Plaintiff Local 137 Joint Funds the amount of \$22,547.00 for the time period April, May, October, November and December 2006 in full satisfaction of the alleged delinquency contained in the Complaint.

THIRD SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as this matter is subject to arbitration under the Parties' alleged Collective Bargaining Agreement.

FOURTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant has already paid benefits to Operating Engineers, Local Union 825 on behalf of the individuals for the time period in question in the Complaint, in the amount of \$2,163.10 for the month of November 2006.

FIFTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, by the doctrine of accord and satisfaction.

SIXTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either whole or in part, as Defendant offered to permit an audit.

SEVENTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, either in whole or in part, as Defendant Nacirema acted in good faith.

EIGHTH SEPARATE DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, as any award in this matter would result in the unjust enrichment of Plaintiffs.

NINTH SEPARATE DEFENSE

The Complaint is barred by the doctrine of equitable estoppel.

TENTH SEPARATE DEFENSE

Defendant Nacirema reserves the right to rely on any defense which may become available during the course of discovery or at Trial.

WHEREFORE, Defendant Nacirema demands judgment dismissing Plaintiffs' Complaint with prejudice together with attorney's fees and costs of the within action and such other relief as the Court may deem appropriate.

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental
Services Company, Inc.

/s/ Ronald L. Tobia, Esq.

RONALD L. TOBIA

DATED: May 2, 2008

DESIGNATION OF TRIAL COUNSEL

Please take notice that Ronald L. Tobia, Esq. and Jill Tobia Sorger, Esq. (JS-5898) are designated as trial counsel for the Defendant Nacirema Environmental Services Company, Inc. in the above matter.

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental
Services Company, Inc.

/s/ Ronald L. Tobia, Esq.
RONALD L. TOBIA

DATED: May 2, 2008

CERTIFICATION

This is to certify that a copy of the within Answer has been served within the period of time prescribed by the Rules of Court, as extended by Stipulation Extending Time to Answer the Complaint Ordered on April 4, 2008 by the Honorable Stephen C. Robinson, U.S.D.J.

/s/ Ronald L. Tobia, Esq.
RONALD L. TOBIA

DATED: May 2, 2008

PROOF OF SERVICE

I hereby certify that on this 2nd day of May 2008 I caused a true and correct copy of the foregoing Answer to Complaint and Separate Defenses on Behalf of Defendant Nacirema Environmental Services Company, Inc. to be served electronically upon:

James M. Steinberg, Esq.
Brady McGuire & Steinberg, P.C.
603 Warburton Avenue
Hastings-on-Hudson, New York 10706
Attorneys for Plaintiffs

Ronald L. Tobia, Esq. (RT-9775)
TOBIA & SORGER ESQS., LLC
500 Supor Boulevard
Harrison, New Jersey 07029
973-746-6000
Attorneys for Defendant Nacirema Environmental
Services Company, Inc.

/s/ Ronald L. Tobia, Esq.

RONALD L. TOBIA

DATED: May 2, 2008

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS The Annuity, Pension, Welfare and apprenticeship Skill Improvement and Safety Funds Of the International Union of Operating Engineers, Local 137, 137A, 137B, 137C & 137R,
DEFENDANTS Nacirema Environmental Services Company, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) JAMES M. STEINBERG (JS-3515), Brady McGuire & Steinberg, P.C., 603 Warburton Avenue
ATTORNEYS (IF KNOWN) RONALD L. TOBIA, ESQ. (RT-9775), Tobia & Sorger, Esqs., LLC, 500 Supor Blvd., Harrison, NJ 07029 (973-746-6000)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) ~~Hastings on Hudson, New York 10706 (914 478 4202)~~

Benefit Funds are seeking alleged delinquent contributions

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
[] 110 INSURANCE	[] 310 AIRPLANE	[] 362 PERSONAL INJURY - MED MALPRACTICE	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE REAPPORTIONMENT				
[] 120 MARINE	[] 315 AIRPLANE PRODUCT LIABILITY	[] 365 PERSONAL INJURY PRODUCT LIABILITY	[] 620 FOOD & DRUG	[] 28 USC 158	[] 410 ANITRUST				
[] 130 MILLER ACT	[] 320 ASSAULT, LIBEL & SLANDER	[] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	[] 625 DRUG RELATED SEIZURE OF PROPERTY	[] 423 WITHDRAWAL 28 USC 157	[] 430 BANKS & BANKING				
[] 140 NEGOTIABLE INSTRUMENT	[] 330 FEDERAL EMPLOYERS' LIABILITY	[] 370 OTHER FRAUD	[] 630 LIQUOR LAWS		[] 450 COMMERCE/ICC RATES/ETC				
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	[] 340 MARINE	[] 371 TRUTH IN LENDING	[] 640 RR & TRUCK	PROPERTY RIGHTS	[] 460 DEPORTATION				
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT LIABILITY	[] 380 OTHER PERSONAL PROPERTY DAMAGE	[] 650 AIRLINE REGS	[] 820 COPYRIGHTS	[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)				
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)	[] 350 MOTOR VEHICLE	[] 385 PROPERTY DAMAGE PRODUCT LIABILITY	[] 660 OCCUPATIONAL SAFETY/HEALTH	[] 830 PATENT	[] 480 CONSUMER CREDIT				
[] 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	[] 355 MOTOR VEHICLE PRODUCT LIABILITY		[] 690 OTHER	[] 840 TRADEMARK	[] 490 CABLE/SATELLITE TV				
[] 160 STOCKHOLDERS SUITS	[] 360 OTHER PERSONAL INJURY		LABOR		[] 810 SELECTIVE SERVICE				
[] 190 OTHER CONTRACT			[] 710 FAIR LABOR STANDARDS ACT	SOCIAL SECURITY	[] 850 SECURITIES/COMMODITIES/EXCHANGE				
[] 195 CONTRACT PRODUCT LIABILITY			[] 720 LABOR/MGMT RELATIONS	[] 861 MIA (1395FF)	[] 875 CUSTOMER CHALLENGE				
[] 196 FRANCHISE			[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	[] 862 BLACK LUNG (923)	[] 881 AGRICULTURE ACTS				
	ACTIONS UNDER STATUTES	PRISONER PETITIONS	[] 740 RAILWAY LABOR ACT	[] 863 DIWC (405(g))	[] 892 ECONOMIC STABILIZATION ACT				
REAL PROPERTY	CIVIL RIGHTS		[] 790 OTHER LABOR LITIGATION	[] 864 SSID TITLE XVI	[] 893 ENVIRONMENTAL MATTERS				
[] 210 LAND CONDEMNATION	[] 441 VOTING	[] 510 MOTIONS TO VACATE SENTENCE	[x] 791 EMPL RET INC SECURITY ACT	[] 865 RSI (405(g))	[] 894 ENERGY ALLOCATION ACT				
[] 220 FORECLOSURE	[] 442 EMPLOYMENT	[] 530 HABEAS CORPUS		FEDERAL TAX SUITS	[] 895 FREEDOM OF INFORMATION ACT				
[] 230 RENT LEASE & EJECTMENT	[] 443 HOUSING	[] 535 DEATH PENALTY		[] 870 TAXES	[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE				
[] 240 TORTS TO LAND	[] 444 WELFARE	[] 540 MANDAMUS & OTHER		[] 871 IRS-THIRD PARTY	[] 950 CONSTITUTIONALITY OF STATE STATUTES				
[] 246 TORT PRODUCT LIABILITY	[] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	[] 550 CIVIL RIGHTS		[] 20 USC 7609	[] 980 OTHER STATUTORY ACTIONS				
[] 290 ALL OTHER REAL PROPERTY	[] 448 AMERICANS WITH DISABILITIES - OTHER	[] 555 PRISON CONDITION							
	[] 440 OTHER CIVIL RIGHTS								

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ 28,595.38 OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Nacirema Environmental Services Company, Inc.
211-217 W. 5th Street
Bayonne, NJ 07002

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

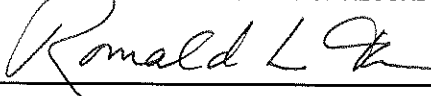
Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☐ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE

5/2/08

RECEIPT #

SIGNATURE OF ATTORNEY OF RECORD



ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo. May Yr. 2000)
Attorney Bar Code # RT-9775

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)